

EX PARTE OR LATE FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

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Federal Communications Commission
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**EX PARTE COMMENTS OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("CNMI"),¹ by its attorneys, hereby submits these ex parte Comments in the above-captioned proceeding to address the preliminary plan for rate integration filed with the Commission by GTE Service Corporation ("GTE") on January 31, 1997.² Although the Commission has not placed the preliminary rate integration plans on public notice, the CNMI hopes that the deficiencies and concerns discussed in these Comments will cause GTE to reexamine its preliminary plan and submit a final plan on June 1, 1997 which is consistent with the rate integration requirements.

As shown below, GTE's preliminary plan for rate integration violates Sections 202(a) and

¹ This letter is submitted by the Office of the Governor of the CNMI.

² See Letter from F. Gordon Maxson, Director-Regulatory Affairs, GTE, to William F. Caton, Acting Secretary, FCC (Jan. 31, 1997) ("GTE Preliminary Plan"). The Commission has required that providers of interexchange service to the CNMI and to the Territory of Guam ("Guam") present preliminary rate integration plans by February 1, 1997, and final plans by June 1, 1997. In re Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Report and Order, 11 F.C.C. Rcd. 9564, ¶ 68 (1996) ("Report and Order").

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254(g) of the Communications Act of 1934 ("the Act")³ as well as the Commission's rate integration policy. The plan does not reflect a uniform nationwide ratemaking methodology in two important respects. First, the plan proposes to utilize a distance-insensitive ratemaking methodology for intra-mainland calls and a dissimilar distance-sensitive methodology for calls from the mainland to or between non-contiguous points. Second, the Rate Groups or mileage bands used under the plan are not proportionate and thus are unreasonable.⁴ In particular, proposed Rate Groups 2-6 reflect inflated rates in relation to the rates contained in Rate Group 1. Finally, the plan also raises serious questions over GTE's apparent exclusion of private line services from rate integration.

I. GTE'S PRELIMINARY PLAN ENCOMPASSES DIFFERENTIAL RATEMAKING METHODOLOGIES

By proposing to employ a different ratemaking methodology for calls between points in the contiguous U.S. and calls between the contiguous U.S. and non-contiguous points (as well as between non-contiguous points), GTE's plan is unlawful.

The fundamental requirement of rate integration calls for a carrier to utilize the same ratemaking methodology for services to offshore points as it uses for services between contiguous points.⁵ The Commission has determined that "a rate structure that uses different

³ 47 U.S.C. 254(g) (1996).

⁴ The Commission did not require that actual rates be listed in carriers' preliminary plans. Report and Order at ¶ 67. Thus, GTE did not supply actual proposed rates, just a series of six Rate Groups. The CNMI is working, therefore, under the assumption that the higher the Rate Group number, the higher the actual rate.

⁵ In re Establishment of Domestic Communications Satellite Facilities, Second Report and Order, 35 F.C.C.2d 844, at ¶¶ 36-37, aff'd on recon., 38 F.C.C.2d 665 (1972), aff'd sub nom. Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975) (Domsat II).

ratemaking methods to determine the rates that different users pay for comparable services is inconsistent with the national policy prohibiting unjust or unreasonable rate discrimination[.]”⁶ Accordingly, in its Report and Order, the Commission is requiring carriers to “establish rates for services provided to Guam and the Northern Marianas consistent with the rate methodology it employs for services it provides to other states.”⁷ GTE’s preliminary plan flatly violates this tenet and, if permitted to be implemented, threatens to undermine the doctrine of rate integration.

Under GTE’s plan, calls between contiguous U.S. points will be assessed at a flat “Rate Group 1” rate. Thus, a call between Bellingham, on the northwest coast of Washington State, and Key West, at the southernmost tip of Florida, covering a distance of 2,760 miles, would cost the same as a call between Washington, D.C., and Richmond, Virginia (about 115 miles). Clearly, costs for calls within Rate Group 1 are pooled and averaged, and resulting rates are distance-insensitive.

By contrast, calls involving non-contiguous points do not eliminate distance as a factor; rather, distance is emphasized as a factor with respect to such calls. Specifically, calls between non-contiguous points and any contiguous point as well as calls between the non-contiguous points themselves will all be subject to a mileage-banding approach. Costs for such calls apparently are not being pooled and averaged, and the resulting rates are distance-sensitive.⁸

⁶ Integration of Rates and Services, 50 Fed. Reg. 41,714, 41,716 (1985).

⁷ Report and Order at ¶ 67.

⁸ GTE claims that its proposed rate structure is “postalized,” that is, distance-insensitive. GTE Preliminary Plan at 2. In reality, as shown herein, only intra-mainland calls are postalized. All other types of calls are fundamentally mileage-based.

Such a differential rate structure violates Sections 254(g) and 202(a) of the Communications Act of 1934, as well as the Commission's well-established rate integration policy. According to the Commission:

[A] rate structure which averages rates in 48 states and de-averages rates in 2 states may subject the residents of those two states to an unreasonable prejudice or disadvantage within the meaning of Section 202(a).... We have decided that a rate structure which uses different ratemaking methods to determine the rates which different users pay for comparable services is inconsistent with the national policy expressed in Section 202(a). We have accordingly required carriers to take appropriate steps to eliminate partial or selective de-averaging in an orderly manner.⁹

By proposing to utilize a distance-insensitive ratemaking methodology for intra-mainland calls and a dissimilar distance-sensitive methodology for calls from the mainland to or between non-contiguous points, GTE's proposed plan is unlawful. Were the preliminary plan to be implemented, GTE would have a virtual free hand to set significantly higher rates for calls involving offshore points than the rates for calls involving points entirely within the mainland.

II. THE MILEAGE-BANDING APPROACH GTE PROPOSES TO USE IS UNREASONABLE

GTE's preliminary plan does not reflect a uniform nationwide ratemaking methodology since the Rate Groups or mileage bands it would employ are not proportionate. Absent adequate justification for such disproportionate bands, the preliminary plan is unreasonable and not in compliance with the Commission's rate integration policies. It appears that the differential ratemaking methodologies utilized in the plan, and discussed above, lead to this result.

⁹ In re MTS and WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 F.C.C. 2d 177, ¶ 63 (1980).

While the primary purpose of rate integration is to “give maximum effect to the elimination of overall distance as a major cost factor[.]”¹⁰ carriers can still utilize distance as a factor in setting rates. Accordingly, in its Report and Order, the Commission stated that “carriers may comply with this rule by establishing reasonable mileage bands for calls.”¹¹

The Commission has historically considered a mileage band to be “reasonable” and thus consistent with the uniform nationwide ratemaking methodology if it is *proportionate* in relation to existing nationwide mileage patterns.¹² The Commission reiterates this “proportionate test” in its Report and Order in referring to a “new mileage step with a proportionate increase in rates.”¹³

The mileage bands GTE proposes in its preliminary plan are clearly not proportionate in

¹⁰ In re Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the United States Mainland and the Offshore Points of Hawaii, Alaska, and Puerto Rico/Virgin Islands, Memorandum Opinion, Order and Authorization, 61 F.C.C.2d 380, 383 (1976) (citing Domsat II at ¶ 37).

¹¹ Report and Order at ¶ 52.

¹² See, e.g., In re Integration of Rates and Services, Memorandum Opinion, 62 F.C.C. 2nd 693, ¶ 7 (1976) (“[w]e see no just or reasonable basis for concluding that rates for service between Puerto Rico and the Virgin Islands should be substantially higher in proportion to rates for service to the Mainland”); In re AT&T (“Equalization Filing”), Memorandum Opinion and Order, 89 F.C.C. 2d 1000, ¶ 28 (1982) (“[g]enerally speaking, the main objective of our rate integration policy for offshore points such as Hawaii has been to ensure that these points would benefit from the advent of distance insensitive technology (e.g. satellites) by incorporation of offshore points into the mainland rate schedule. For example, under this regime, rates for calls from San Francisco to Hawaii would be roughly equivalent to rates for calls from San Francisco to Maine.”).

¹³ Report and Order at ¶ 47, n.99 (citing Domsat II at ¶¶ 35-36). The Commission cites Domsat II as “conditioning domestic satellite authorization for message telephone service on integration of Alaska, Hawaii and Puerto Rico into the uniform milage (sic) rate pattern of the contiguous states, perhaps by extending the last mileage step to reach those distances, or by creating a new mileage step with a proportionate increase in rates[.]” Id.

relation to its existing nationwide mileage patterns and thus are unreasonable. Under GTE's preliminary plan, Rate Groups 2-6 do not appear to be proportionate to Rate Group 1. For example, a call between San Francisco to Maine (approximately 2,750 miles)¹⁴ would fall under Rate Group 1, while a call between San Francisco and Hawaii, at approximately 2,400 miles a shorter distance, would fall under Rate Group 3. Indeed, the Commission has illustratively stated that calls between these particular points should be rated approximately the same.¹⁵

GTE's preliminary plan has no consistency when rates involving offshore points are involved. For example, a call between Miami and San Juan, Puerto Rico (approximately 1,000 miles), would fall into Rate Group 2. A call between Anchorage, Alaska, and Seattle (1,400 miles) would fall in Rate Group 3, as would a call between Honolulu, Hawaii, and Anchorage (more than 2,700 miles). By contrast, calls of equivalent distances between mainland points would all fall into Rate Group 1.

CNMI ratepayers apparently would also pay rates that are substantially higher in many cases than the rates for calls of equivalent distances elsewhere in GTE's calling area. For example, a call between the CNMI and Alaska (approximately 4,500 miles) would fall in Rate Group 5, while a call between Key West, Florida, and Hawaii (approximately 4,700 miles) would fall in Rate Group 3. Similarly, a call between the CNMI and Hawaii (approximately 3,700 miles) would fall into Rate Group 3 while calls between Washington State and the U.S. Virgin Islands (approximately 3,800 miles) would fall into Rate Group 2. In fact, the only Rate

¹⁴ All mileage calculations in this letter were obtained through the use of an on-line mileage calculator. How Far Is It? (visited Apr. 28, 1997) <<http://www.indo.com/distance/>>.

¹⁵ See supra note 12.

Group 1 calls available to the CNMI are calls to and from Guam, a distance of little more than 100 miles.

Attachment A hereto, which compares the distances in mileage covered by the various Rate Groups GTE is proposing, demonstrates the disproportionateness and arbitrariness of these rate groupings. As this attachment illustrates, GTE's preliminary plan contains a seemingly random set of rate groups that bear little resemblance to actual mileage and has the effect of unfairly surcharging calls to and between non-contiguous points.¹⁶

By contrast, applying a uniform nationwide ratemaking methodology to GTE's plan would reflect generally proportionate mileage banding beyond Rate Group 1. Thus, given that Rate Group 1 covers a mileage band of 2,760 miles, the maximum distance from one end of the mainland to the other, Rate Group 2 should then cover calls spanning approximately 2,761 to 5,520 miles; Rate Group 3, approximately 5,521 to 8,281 miles and so on. Attachment B hereto illustrates the Rate Group under GTE's preliminary plan that would apply to calls placed from the CNMI to various U.S. destinations contrasted with the rate groupings that would apply were the plan based on a lawful uniform ratemaking methodology.

The Rate Groups GTE proposes to utilize in its preliminary plan are not proportionate and are not accompanied by any justification for such deviations. Thus, in their current form,

¹⁶ It should be noted that in an ex parte filing submitted in the instant proceeding on June 20, 1996, GTE states that "[u]nder its existing rate structure, [Micronesian Telecommunications Corporation] charges the same rate from the CNMI to the U.S. Mainland and Hawaii." See letter from Gail L. Polivy to William F. Caton, dated June 20, 1996, CC Dkt. No. 96-61, at 7 ("GTE Letter"). The letter goes on to state that these rates conform to the rate integration requirements. Id. Under the rate structure proposed in GTE's preliminary plan, however, this would change with rates from the CNMI to the mainland (Rate Group 4) being higher than those from the CNMI to Hawaii (Rate Group 3). Nowhere is this inconsistency explained.

they are unreasonable and cannot constitute a uniform nationwide ratemaking methodology.

III. GTE'S PLAN TO NOT INTEGRATE PRIVATE LINE RATES RAISES SERIOUS CONCERNS

Finally, the CNMI is concerned over the preliminary plan's exclusion of GTE private line services from rate integration.

It is well-established under the Commission's policies that the rate integration requirement encompasses private line services.¹⁷ Notwithstanding this, GTE's preliminary plan proposes not to integrate the rates of Micronesian Telecommunications Corporation ("MTC"), the GTE subsidiary which provides both local and long distance services in the CNMI, with GTE Telecom Incorporated (the GTE affiliate which provides private line services) or GTE Government Systems Corporation (the GTE affiliate which provides government private lines).¹⁸ GTE apparently believes that it is not required to integrate private line rates because "[n]either GTE Telecom Incorporated nor GTE Government Systems Corporation currently provides service to or from the CNMI."¹⁹

GTE's argument for not proposing to integrate its private line rates to the CNMI is unavailing. Quite simply, MTC has proposed to offer common carrier private line services between the CNMI and Guam via its recently-completed fiber optic cable, effective April 30, 1997.²⁰ Rates for services over this cable must be rate integrated. Moreover, to the extent that

¹⁷ Report and Order at ¶ 47, and cases cited therein.

¹⁸ Preliminary Plan at 1.

¹⁹ See GTE Letter, supra note 16.

²⁰ Transmittal No. 125, Tariff F.C.C. No. 4, Apr. 15, 1997.

GTE begins providing private line services between the CNMI and the mainland, including over the fiber optic cable through Guam to the mainland, it must at that time fully integrate its private line rates.

IV. CONCLUSION

As shown above, GTE's preliminary rate integration plan is fundamentally inconsistent with the requirements of rate integration.

These ex parte Comments are being filed in the Office of the Secretary on April 30, 1997, and should be included in the public record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas K. Crowe', written over a horizontal line.

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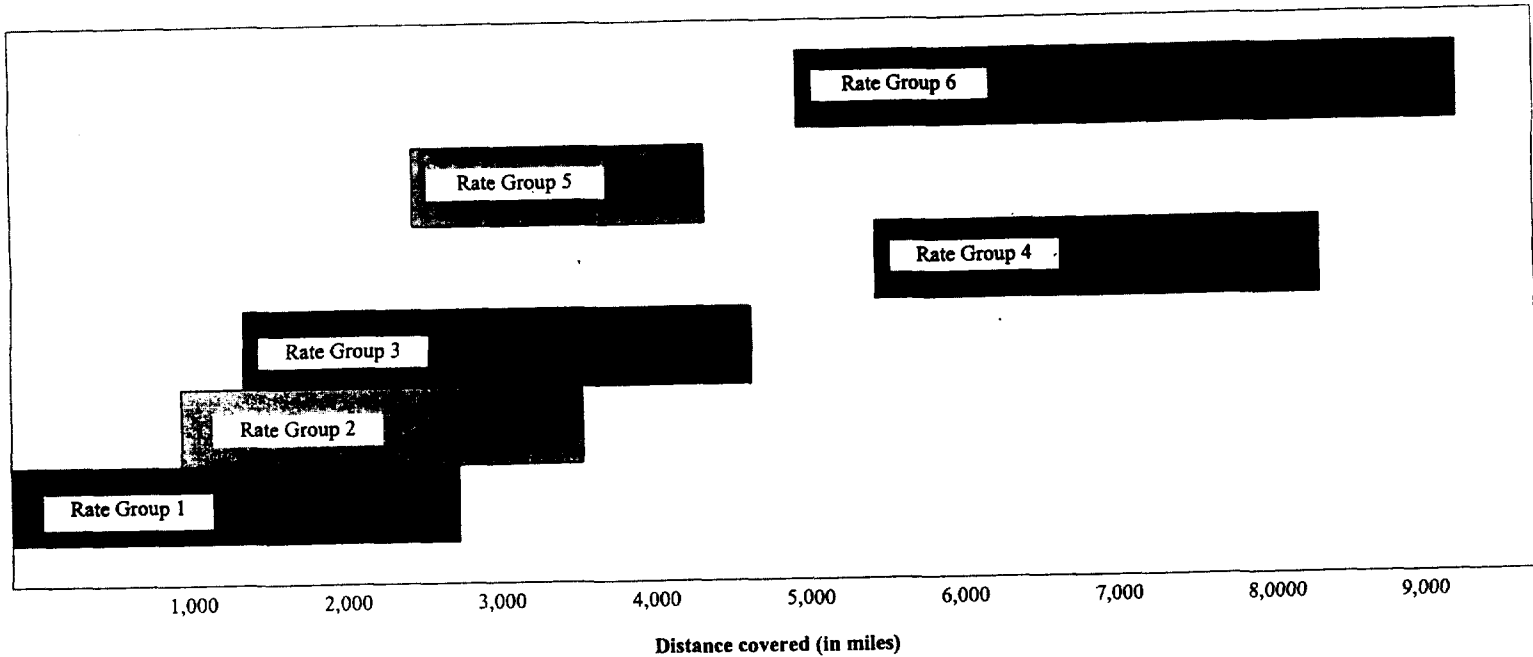
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Dated: April 30, 1997

Attachment A

GTE's Disproportionate Mileage Bands



The position and length of each rate group was plotted by calculating the shortest and longest distances covered by that group. Specifically, the Rate Groups and the distances used were:

Rate Group 1: 0-2,760 miles (Bellingham, WA-Key West, FL)

Rate Group 2: 1,091 miles (Key West, FL-San Juan, PR)-3,814 miles (Bellingham, WA-U.S. Virgin Islands)

Rate Group 3: 1,372 miles (Bellingham, WA-Anchorage, AK)-4,790 miles (Key West, FL-Honolulu, HI)

Rate Group 4: 5,519 miles (CNMI-Bellingham, WA)-8,355 miles (Guam-Key West, FL)

Rate Group 5: 2,600 miles (American Samoa-Honolulu, HI)-4,457 miles (CNMI-Anchorage, AK)

Rate Group 6: 5,250 miles (American Samoa-Bellingham, WA)-9,328 miles (CNMI-U.S. Virgin Islands)

Attachment B

**GTE's Rate Groups Compared to
Proportionate Mileage Bands**

Calls between the CNMI and	Distance	Proportionate Mileage Band¹	GTE Proposed Rate Group
Agana, GU	136 miles	1	1
Pago Pago, AS	3,603 miles	2	3
Honolulu, HI	3,802 miles	2	3
Anchorage, AK	4,507 miles	2	5
Bellingham, WA	5,519 miles	2	4
San Diego, CA	6,063 miles	3	4
Caribou, ME	7,676 miles	3	4
Washington, D.C.	7,801 miles	3	4
Key West, FL	8,228 miles	3	4
San Juan, PR	9,267 miles	4	6
Charlotte Amalie, VI	9,332 miles	4	6

¹ These bands are based on the proportionate distance encompassed by GTE's proposed Rate Group 1 (approximately 2,760 miles). In order for GTE to maintain a consistent rate structure, its mileage bands that encompass offshore points would have to cover the same approximate distance as the band that covers the mainland. Such bands would have the following distances:

Mileage Band 1: 0-2,760 miles
Mileage Band 2: 2761-5,522 miles
Mileage Band 3: 5,523-8,282 miles
Mileage Band 4: 8,283-11,042 miles

CERTIFICATE OF SERVICE

I, Keith Tate, serving as secretary to the Law Offices of Thomas K. Crowe, P.C., hereby certify that a copy of the foregoing Ex Parte Comments was sent by first class United States mail, postage pre-paid, or by hand delivery where indicated by an asterisk (*), this 30th day of April, 1997, to the following:

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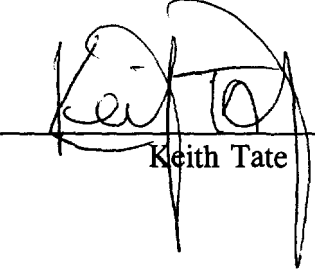
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